REMARKS

Favorable reconsideration of this application, as presently amended, is respectfully requested.

Arguments Relating To The Indefiniteness Of The Claims

Claim 8:

The Examiner objects, under 35 USC 112 to the phrase *"the four non-neutral points sit on a common plane wherein...(2) the common plane is further out on the neutral axis than the corresponding neutral point."* The objection is traversed. The language merely implies that the points sit on a plane which is darker than corresponding neutral points. This is clear from the specification, page 9, lines 6-16.

As to the Examiner's objection that Claim 8 provides for the use of patch code values, it is clear that the claim is to a system and not a method or process. The system is comprised of structure including at least four patches that are selected by the designation of a set of defined neutral points and non-neutral points. Claims to a structural system need not recite steps delimiting how the system is intended to be used.

The Examiner has rejected Claim 8 under 35 USC 101 as being drawn to an improper definition of a process. Again, the claim is to a system and not a method or process. The system is comprised of structure including at least four patches that are selected by the designation of a set of defined neutral points and non-neutral points.

Arguments Relating To The Novelty And Non-Obviousness Of The Claims

Claim 1:

Claim 1 stands rejected under 35 USC 102(e) as anticipated by Liu et al. '469. Claim 1 has been amended to more clearly define the invention. Liu et al. is not believed to anticipate or make obvious the specific features set forth in amended Claim 1.

Original Claim 1 set forth a calibration method which includes producing a calibration target having one subset of patches intended to have neutral density values and another subset of patches intended to have non-neutral density values. These features remain in the claim, which has been amended to more clearly point out that an aspect of the present invention entails producing error signals which are functions of the measured deviation from intended densities of both of these subsets.

Liu et al. relates to a calibration process wherein a test target is processed using a set of potential calibration functions by a digital image processor 90 (Fig. 9). A set of processed test targets are printed by printer 92 and measured by scanner 94 to determine the printer response for each of the potential calibration functions. The measured printer response for each of the set of potential calibration functions are compared to aim values 44 by image processor 90, and the potential calibration function having the smallest error criterion value is selected for use as the printer calibration function.

The Examiner correctly points out that Liu et al. discloses that the printed test targets may, in the alternative, be neutral patches, color patches or a combination of neutral and color patches. However, it is important to note that *"[i]n a preferred embodiment of [Liu et al.] the test target will include one or more neutral patches having different density levels"* (column 6, lines 13-17). The importance of the quoted passage lies in the fact that the entire process disclosed by Liu et al. is capable of operation using only neutral patches; as this is their preferred embodiment.

Now, if it is not important in the Liu et al. disclosure whether the test targets be neutral patches, color patches or a combination of neutral and color patches (and in fact it is preferred that they all be neutral patches), it follows that the disclosure does not suggest the production of color patches of a first subset intended to have neutral color density values and a second subset intended to have non-neutral density values so that error signals of the two different types of patch subsets can be measured and used to adjust the process.

Accordingly, Liu et al. is not believed to anticipate or make obvious the features of Claim 1.

Claim 1 stands further rejected under 35 USC 103 as obvious over Liu et al. in view of Wan '568. The rejection is respectfully traversed.

Wan, whether considered individually or in combination with Liu et al. does not show or suggest the specific features lacking in Liu et al. and discussed above. That is, the applied references, taken alone or in combination, do not show or suggest the production of color patches of a first subset intended to have neutral color density values and a second subset intended to have non-neutral density values so that error signals of the two different types of patch subsets can be measured to produce error signals which are functions of the measured deviation from intended densities <u>of both of these subsets</u>.

<u>Claims 2, 4 and 5:</u>

Claims 2, 4 and 5 depend from Claim 1 and set forth additional unique features which are also not believed to be found in the primary reference

to Liu et al. or in the secondary reference applied in the rejections. These claims are allowable at least for the reasons set forth above with respect to Claim 1.

Claim 8:

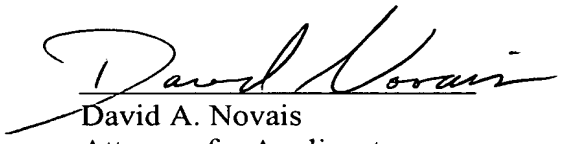
Claim 8 has been rewritten in independent form. It stands rejected under 35 USC 103(a) as being obvious over Rolleston '613. Although Applicant can not disagree with the Examiner's logic that "the selection of arbitrary points.are entirely arbitrary....", it is argued that the selection of four non-neutral points "*such that the four non-neutral points sit on a common plane wherein (1) the neutral axis is normal to the common plane, (2) the common plane is further out on the neutral axis than the corresponding neutral point, (3) the four non-neutral points represent corners of a square in the common plane such that the square is centered on a point where the neutral axis intercepts the common plane, and (4) all four non-neutral points are roughly equidistant from each other*" is anything but arbitrary.

In rejecting claims under 35 U.S.C. 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed, /cir, 1988) and compare Stratoflex Inc. v. Aeroquip corn., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). In so doing, the Examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal Inc, v. Rudkin-Wiley Corp., 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988); Asland Oil, Inc, v. delta Resins & Refractories, Inc., 776 f.2d 281, 227 USPQ 657 (Fed. Cir. 1985); ASC Hospital Systems, Inc, v. Montefiore Hospital, 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Mere conclusion that the structure defined in the claims are "arbitrary" is improper.

Summary

In view of the foregoing comments, it is submitted that the inventions defined by each of claims 1-2, 4-5 and 8 are patentable, and a favorable reconsideration of this application is therefore requested.

Respectfully submitted,



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